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Attorneys for Plaintiff and Counter-Defendant
GOOD TIMES RESTAURANTS, LLC and
Third Party Defendants
VIKRAM BHAMBRI, ANUPAMA BHAMBRI;
TARESH ANAND; JATINDER PAL SINGH KOHLI;
And SACHIN DHAWAN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOOD TIMES RESTAURANTS, LLC, a)
California limited liability company,)

Plaintiff,)

v.)

SHINDIG HOSPITALITY GROUP LLC,)
an Illinois limited liability company; and)
DOES 1-10,)

Defendant.)

SHINDIG HOSPITALITY GROUP LLC,)
an Illinois limited liability company)

Counter-Plaintiff,)

v.)

GOOD TIMES RESTAURANTS, LLC, a)
California limited liability company,)

Counter-Defendant,)

SHINDIG HOSPITALITY GROUP, LLC,)
an ILLINOIS limited liability company,)

Third-Party Plaintiff,)

Case No. 3:21-cv-07688 AGT

**REPLY MEMORANDUM IN SUPPORT
OF MOTION TO STRIKE AMENDED
COUNTERCLAIM AND AMENDED
THIRD PARTY COMPLAINT**

Date: June 24, 2022

Time: 10:00 a.m.

Courtroom: A, 15th Floor

[The Honorable Alex G. Tse]

1 v.

2 VIKRAM BHAMBRI; ANUPAMA
3 BHAMBRI; TARESH ANAND;
4 JATINDER PAL SINGH KOHLI; SACHIN
DHAWAN; and ROES 1 - 20,

5 Third Party Defendants.

6 The contention of Shindig Hospitality Group, LLC that it is allowed to
7 seek attorney fees simply because it is pursuing a claim for unfair competition
8 under section 17200 of the California Business and Professions Code is without
9 merit. Before it can seek attorney's fees, Shindig must satisfy the criteria of the
10 private attorney general statute which requires that a significant benefit be
11 conferred on the general public or a large class of persons. Shindig has made no
12 such showing nor can it reasonably do so because its claims for relief are
13 asserted for its own benefit and not for the benefit of the general public. Indeed,
14 Shindig fails to identify a single allegation in its amended counterclaim and third
15 party complaint (the "Amended Pleading") that seeks to confer any benefit on
16 the general public or a large class of persons. Good Times and the third party
17 defendants therefore respectfully request that this Court grant their motion to
18 strike Shindig's allegation of attorney's fees.

19 I. ARGUMENT

20 Good Times and Third Party Defendants move to strike paragraph 83 of
21 the Amended Pleading because there is no legal basis for Shindig to request
22 attorney fees. (Motion at page 2:10-16.) The Motion is based on California
23 Code of Civil Procedure, section 1021.5 which limits an award of attorney's fees
24 under the private attorney general statute to situations "when 'a significant
25 benefit, whether pecuniary or nonpecuniary, has been conferred on the general
26
27
28

1 public or a large class of persons.’ ”¹ (Motion, p. 5:1-3.) The Motion further
 2 states: “Here, the Amended Pleading seeks no benefit or relief on behalf of the
 3 general public or any large class of persons, as this is solely a counterclaim for
 4 the benefit of Shindig.” (*Id.* at 5:3-5.)

5 Shindig argues that it is allowed to seek attorney fees under the private
 6 attorney general statute simply because it is asserting a claim for relief under the
 7 California Unfair Competition Law (the “UCL”). (Opposition, p. 2:17-18.)
 8 However, to obtain attorney’s fees under the private attorney general statute, a
 9 plaintiff must also satisfy the criteria set forth in the attorney general statute.
 10 *Benson v. Southern California Auto Sales, Inc.*, 239 Cal. App. 4th 1198, 1208
 11 (2015) (“A plaintiff can seek attorney fees after prevailing under [the UCL and
 12 False Advertising Law] under Code of Civil Procedure section 1021.5, the
 13 private attorney general statute. The plaintiff must, however, satisfy the code
 14 section’s criteria.”). The criteria is specified in section 1021.5 of the Code of
 15 Civil Procedure which was cited in the Motion at page 5, lines 1-3. Section
 16 1021.5 states, in relevant part:

17 Upon motion, a court may award attorneys’ fees to a
 18 successful party against one or more opposing parties in
 19 any action which has resulted in the enforcement of an
 20 important right affecting the public interest if: (a) a
 21 significant benefit, whether pecuniary or nonpecuniary,
 22 has been conferred on the general public or a large class
 23 of persons, (b) the necessity and financial burden of

24 ¹ Shindig misrepresents the Motion when it argues that “the Moving Parties fail
 25 to cite one single authority in support of their argument that the fees are not
 26 available to Shindig under its Unfair Trade Practices claim in the Pleading.”
 27 (Opposition, p. 1:13-15.) The Moving Parties cite to Code of Civil Procedure
 28 section 1021.5 which is the authority that shows Shindig is not entitled to
 attorney fees based on its 17200 claim. (Motion, p. 5:1-3.)

1 private enforcement, or of enforcement by one public
 2 entity against another public entity, are such as to make
 3 the award appropriate, and (c) such fees should not in
 4 the interest of justice be paid out of the recovery, if
 5 any.

6 “The statute specifically provides for an award only when the lawsuit has
 7 conferred ‘a significant benefit’ on ‘the general public or a large class of
 8 persons.’ *Baxter v. Salutary Sportsclubs, Inc.* (2004) 122 Cal.App.4th 941, 945.

9 Here, Shindig fails to cite any aspect of the amended pleading which is
 10 brought as a significant benefit for the public. Instead, Shindig only cites to
 11 paragraph 79 of the Amended Pleading which relies on the injuries allegedly
 12 suffered by Shindig without any attempt to explain how the remedy of such
 13 injuries would substantially benefit the general public.

14 Specifically, paragraph 79 of the Amended Pleading alleges:

15 The above actions of Counter-Defendants Good Times
 16 and Bhambri also constituted fraudulent trade practices
 17 in violation of Sections 17200 of the California
 18 Business & Professions Code. The above
 19 misrepresentations by Counter-Defendants Good Times
 20 and Bhambri had the capacity to deceive and deceived
 21 Shindig and others because Counter-Defendants Good
 22 Times and Bhambri had superior and exclusive
 knowledge of their business and Shindig *and members*
of the general public had no method of learning of the
falsity of those misrepresentations.

23 *Id.* (emphasis added).

24 Paragraph 79 does not contain a single factual allegation to in any way
 25 show how Shindig’s Amended Complaint confers “a significant benefit” on “the
 26 general public or a large class of persons,” or to show how this litigation would
 27 provide any benefit to a non-client or the public. To portray Shindig as taking
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on a burden for the benefit of the public through this instant litigation is not an accurate portrayal because this lawsuit is being pursued by a single limited liability company, for the sole benefit of that limited liability company. As a consequence, Shindig’s pleading does not support any award of attorney fees under California’s private attorney general statute. Therefore, the allegations for attorney’s fees in paragraph 83 of the Amended Complaint do not pertain, and are not necessary, to the issues in question.

Shindig also does not address how the Amended Pleading would support a request for attorney’s fees under the common fund doctrine. Shindig argues that “while Good Times deceived and engaged in unfair business practices with Shindig directly, Good Times’ actions also affected and could continue to affect the general public.” (Opposition, p. 3:1-2.) Shindig goes on to argue, “For instance, the general public, and all who interacted with Good Times, had no method of learning about the falsity of the misrepresentations made when Good Times offers its services to others.” (Opposition, p. 3:2-5.)

However, there is not one single allegation in the Amended Pleading that Good Times has ever done business with, or even discussed Rooh business opportunities, with any single other person other than Mr. Mallick, let alone the “general public.” “[F]acts not alleged are presumed not to exist.” *Kramer v. Intuit, Inc.*, 121 Cal.App.4th 574, 578 (2003). Thus, Shindig’s assertions that his lawsuit will benefit the public ring hollow. Indeed, “Bhambri and Mr Mallick have a familial relationship as cousins.” (Amended Pleading, ¶ 20.)

As stated in the Motion and not opposed by Shindig, “[u]nder the common fund doctrine, ‘a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.’ *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 (2013).” (Motion, p. 4:19-21.) Here, based on the allegations of the

Amended Pleading, there is no common fund sought in this matter and there is no other party or identified member of the general public that would stand to benefit, let alone be eligible for any damages out of any hypothetical “common fund.” Indeed, the claims for relief asserted in the Amended Pleading are brought solely on behalf of Shindig and none of the claims are brought on behalf of the general public. As such, there is no basis in law or fact for an award of attorney’s fees under the private attorney general doctrine or the common fund doctrine.

II. CONCLUSION

The allegations for attorney’s fees in the Amended Complaint are not relevant and are impertinent to the claims and defenses in this action which are brought solely for the benefit of Shindig. As such, there is no basis for Shindig to seek attorney’s fees under either the private attorney general statute or the common fund doctrine.

Dated: June 3, 2022

GORDON REES SCULLY
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By: 

David L. Jordan

Edward Romero

Attorneys for Plaintiff And Counter-
Defendant GOOD TIMES
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Defendants VIKRAM BHAMBRI,
ANUPAMA BHAMBRI; TARESH
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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

/s/ Edward Romero
EDWARD ROMERO

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